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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,424	02/09/2004	Marie A. Daigle	1544229-0	6590

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SPRINGFIELD, MA 01144-1900

EXAMINER
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SUHOL, DMITRY

ART UNIT	PAPER NUMBER
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3725

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/773,424

Applicant(s)

DAIGLE, MARIE A.

Examiner

Dmitry Suhol

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 15-20 is/are rejected.
- 7) ☒ Claim(s) 13 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/9/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5-6 and 15-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 5, 15 and 17, the metes and bounds of the claim can't be determined due to the phrase "and/or".

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Angelotti '071. Angelotti discloses a model for speech therapy containing all of the claimed elements including, an upper and lower portions (12 and 16) as required by claim 1, a transition element (hinged ends 20 and 22) comprising an opening (30) as required by claim 1, a tongue slideably and removably engaged with the opening (figures 5-6 and col. 4, lines 12-18) as required by claim 1 and 9. At least one of the

Art Unit: 3725

upper and lower portions comprising a poseable material, as required by claims 2 and 12, is shown in figure 6 where it is considered that the jaws is made of a material that may be posed as desired (as shown in figure 6).

Regarding claim 3, Angelotti discloses an upper member having an exterior surface and an interior surface (upper jaw 12) and a lower member having an exterior and interior surfaces (lower jaw 16) joined at the connecting region (22) through hinges (24 and 26) and comprising an opening (30). A tongue made of a poseable material disposed between the front and back sides and disposed in the first opening is shown as tongue 60 and described in col. 4, lines 12-18.

An oral cavity comprising an upper portion disposed on the upper interior surface of the upper member

Claims 3-5, 7-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Lidert '106. Lidert discloses an animated toy containing all of the claimed elements including, with respect to claim 3, an upper member (upper jaw 16) having an exterior surface (top of the upper jaw) and an interior surface (interior surface 46) and a lower member (lower jaw 14) having an exterior (bottom of the lower jaw) and interior surface (interior surface 44) joined at the connecting region (42) comprising an opening (47). A tongue made of a poseable material (col. 5, lines 26+) disposed between a front and back sides (sides of fabric 26) and disposed in the first opening (47), as required by claim 3, is shown as tongue 20 in figure 9. At least one of an upper member or lower member comprising a poseable material disposed between the respective exterior and

Art Unit: 3725

interior surfaces, as required by claim 4, is read onto the stuffing material utilized with the toy since the toy made of such material is clearly capable of assuming a pose as shown in figure 1. At least one of a pair of eyes, eyebrows or a nose, as required by claim 7 are shown in figure 1. The connecting region being a fold which continuously joins the upper member and lower member, as required by claim 8, is shown in figure 9.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 17, 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Angelotti '071 in view of Mandl '645. Angelotti discloses all of the claimed limitations, as stated above, but for an upper lip and lower lip joined to the proximal ends of the upper and lower member respectively where a cavity is formed between the front and back sides of the upper and lower lips and a lip adjuster as required by claims 5 and 17. Madl discloses a device like that of Angelotti which teaches that it is known to manufacture an upper and lower jaw members with a an upper and lower lip joined to the proximal end of each one respectively (figure 3) where the lips have a cavity (cavity which receives member 69) and a lip adjuster (member 69). Therefore it would have been obvious to one having ordinary skill in the art, at the time of applicants invention, to have provided the device of Angelotti with an upper and lower lips including a lip

Art Unit: 3725

adjuster located in a respective cavity in each lip for the purpose of showing the user the positioning of the mouth/lips during various formation of sounds.

Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Angelotti '071 in view of Moore et al '229. Although Angelotti discloses all the claimed elements, as stated above, and further including an alveolar ridge (figure 3 and col. 3, lines 49-52) as required by claim 11, the reference fails to disclose the manipulative tool comprising a separate oral cavity as claimed in claim 10. However, Moore discloses that it is known to manufacture educational models made of a variety of pieces including an oral cavity made of an upper and lower portion (portions 28) receiving teeth (20) which is disposed on an upper and lower interior surface of an upper (12) and lower (14) member, respectively. Therefore it would have been obvious to manufacture the manipulative tool of Angelotti with an oral cavity made of an upper and lower portion receiving teeth which is disposed on an upper and lower interior surface of an upper and lower member, respectively, for the purpose of ease of construction, especially since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

### ***Allowable Subject Matter***

Claims 6, 15-16, 18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 13-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dmitry Suhol whose telephone number is 571-272-4430. The examiner can normally be reached on Mon - Friday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (571) 272-4419. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dmitry Suhol  
Examiner  
Art Unit 3725

Application/Control Number: 10/773,424  
Art Unit: 3725

Page 7